

ENTERED

August 07, 2018

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FLOYD EARL SHERWOOD,

Plaintiff,

v.

JARVIS PARSONS,

Defendants.

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Misc. Action No. H-18-2171

ORDER FOR SUMMARY REMAND

Plaintiff, a pretrial detainee in custody of the Brazos County Detention Center, filed this *pro se* notice of removal as a miscellaneous case. He purports to remove to this Court his state criminal prosecution pending in *State v. Sherwood*, Cause Number 17-05339-CRF-272, in the 272nd District Court of Brazos County, Texas. Plaintiff has not paid the filing fee or submitted an application to proceed *in forma pauperis*. Because the notice of removal fails to comply with federal statutory requirements, this case is **REMANDED** *sua sponte* to the 272nd Judicial District Court of Brazos County, Texas.

28 U.S.C. § 1455 sets forth the procedures for removal of state criminal prosecutions to federal court. When a criminal case is removed the court must “examine the notice promptly” and “[i]f it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.” 28 U.S.C. § 1455(b)(4).

Under section 1455(a), a defendant desiring to remove a criminal prosecution from state court to federal court must file in the proper federal district court a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure. However, the notice of removal filed in this proceeding is unsigned.

Further, the time limitations provision of section 1455(b)(1) requires the notice of removal to be filed not later than 30 days after the defendant is arraigned in state court, or at any time before trial, whichever is earlier. The federal district court may allow an untimely filing for good cause shown. According to the exhibits submitted with the notice, plaintiff was indicted on December 21, 2017, for aggravated assault of a family member committed on September 26, 2017, in *State v. Sherwood*, Cause Number 17-05339-CRF-272, in the 272nd District Court of Brazos County, Texas. The indictment listed enhancement convictions for aggravated assault on a public official and injury to a child. Public records for plaintiff's criminal case show that he was arraigned on March 2, 2018. Plaintiff's notice of removal was not timely filed, and he proffers no arguments establishing good cause for allowing this untimely notice to go forward.


Because the case is being remanded on procedural grounds, the Court need not address the merits of plaintiff's notice. The Court notes, however, that plaintiff relies solely on section 1455. Section 1455 addresses only the procedural aspects of removal, and provides no substantive grounds for removal. Plaintiff shows no legal right to remove his state prosecution to this Court. *See* 28

U.S.C. §§ 1442, 1442a, 1443; *Kruebbe v. Beevers*, 692 F. App'x 173 (5th Cir. May 22, 2017).

For the above reasons, plaintiff's criminal case, *State v. Sherwood*, Cause Number 17-05339-CRF-272, is summarily **REMANDED** to the 272nd Judicial District Court of Brazos County, Texas, pursuant to section 1455(b)(4).

This case is **ORDERED ADMINISTRATIVELY CLOSED** for statistical purposes.

Signed at Houston, Texas, on this the 7th day of August, 2018.



KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE